

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
April 11, 2013

Meeting called to order at 6:06 p.m.

Board Members Present: Deborah Driscoll, Tom Emerson, Susan Tuveson, Bob Melanson, Mark Alesse, Ann Grinnell, Rich Balano, Ann Grinnell

Members absent:

Staff: Gerry Mylroie, Town Planner

Pledge of Allegiance

Minutes: March 28, 2013

Ms. Driscoll moved to accept the minutes as amended

Ms. Tuveson seconded

Motion carries unanimously by all members present

Public Comment:

Public comment and opinion are welcome during this open session. However, comments and opinions related to development projects currently being reviewed by the Planning Board will be heard only during a scheduled public hearing when all interested parties have the opportunity to participate.

David Lincoln noted the Board is guided by the Comprehensive Plan and restricted by the Codes adopted, however they should also consider the broader aspects of proposals before the Board in regard to the benefits or harm to the Town. He referenced the hazard of a 60,000 gallon propane tank, and the issues he raised [not stated] prior to going to the trouble of a site walk.

Susan Waldron, Kittery Point, asked about the proposed development on Brave Boat Harbor Road. Mr. Emerson explained this item is currently before the Board and public comment will be allowed at the appropriate time.

There was no further public comment.

PUBLIC HEARING

ITEM 1 – Desjardins/Old Post Road New Dwelling – Modification to an Approved Plan

Action: Hold a public hearing, review plan grant or deny preliminary/final approval. Michael Desjardins, owner and applicant, requests approval to construct a single dwelling-unit within a new second story addition to the existing single story office building. The property, located at 122 Old Post Road in the Business Local zone, Map 14, Lot 15, is proposed to be brought in compliance with street trees and buffer planting requirements that were not enacted at the time of the 2003 approval.

Mike Desjardins, owner, introduced himself.

Mr. Emerson asked if there were any comments regarding the recent site walk. Ms. Tuveson noted the minutes of the site walk were well done and she had no issues.

Earldean Wells noted there was a suggestion that a rain garden be employed to handle the sump pump drainage and requested if that is to be done there needs to be notes on the plan to that effect. Mr. Desjardins stated these would be included on final plan submission.

The Public Hearing opened at 6:17 p.m.

Ralph Littlefield, 124 Old Post Road, stated he and Mr. Desjardins have spoken and agreed to construct a privacy fence running 60 feet from the garage toward the back of the property. He thanked the Board for conducting the site walk.

Anthony Montagna, 118 Old Post Road, abutting property. His grievance is with the surface drainage and with the impact of the drainage on his driveway. The sump pump and pipe is within five feet of his driveway, and could pump out 6,000 gallons of water per hour. It would only take 3.5 hours to fill a swimming pool at this rate. Over the course of the last 8-10 years, the amount of water discharged has

ruined his driveway and devalued his property. He read from the following ordinance sections:

- 16.9.1.7 - *Any nonresidential yard setback space abutting an existing or potential residential area shall be maintained as a buffer strip by the developer. Such buffer area shall be for the purpose of eliminating any adverse effects upon the environmental or aesthetic qualities of abutting properties or any type of nuisance affecting the health, safety, welfare and property values of the residents of Kittery.*
- 16.8.8.1 - *Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise drainage may be accomplished by a management system of constructed features such as swales, culverts, under drains, and storm drains. The wooded area existing cannot contain the water from the sump pump.*
- 16.8.8.2 Post-construction Stormwater Management, all stormwater management systems must be maintained.
- 16.8.8.2.3.C.1 - *...no applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for new development or redevelopment to which this Section is applicable will receive such permit or approval for that new development or redevelopment unless the applicant also receives approval for its Post-construction stormwater management plan and stormwater management facilities.*
- 16.8.8.2.3.D.1.b - *...if the stormwater management facilities require maintenance to function as intended by the approved Post-construction stormwater management plan, that person must take corrective action(s) to address the deficiency or deficiencies; ...*
- 16.8.8.2.3.D.1.b - *that person or a Qualified Post-construction Stormwater Inspector hired by that person, must, on or by July 1 of each year, provide a completed and signed certification to the Code Enforcement Officer in a form provided by the Town, certifying that the person has inspected the stormwater management facilities and that they are adequately maintained and functioning as intended by the approved Post-construction stormwater management plan, or that they require maintenance or repair, describing any required maintenance and any deficiencies found during inspection of the stormwater management facilities and, if the stormwater management facilities require maintenance or repair of deficiencies in order to function as intended by the approved Post-construction stormwater management plan, the person must provide a record of the required maintenance or deficiency and corrective action(s) taken.*
- Definitions: Aggrieved party means an owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this title; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

The so-called drainage system has been a problem and requests the Board seriously consider the impact on his property.

- *Flood or flooding means:*
 - 1. *A general and temporary condition of partial or complete inundation of normally dry land areas from:*
 - a. *The overflow of inland or tidal waters,*
 - b. *The unusual and rapid accumulation or runoff of surface waters from any source; ...*
- 16.4.5.1 - *Owner or Persons Liable. Any person(s), firm, corporation, or legal entity being the owner of or having control or use of any buildings or premises, who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this Code is responsible for the violation and is subject to the penalties and the remedies herein provided.*
- 16.4.5.3 - *Purpose of Enforcement Provisions. The purpose of these title enforcement provisions is to provide an alternative method in addition to Section 16.4.4 for enforcing and securing compliance with the provisions of this Code in a just, speedy and cost-effective manner, and thereby to protect, preserve and enhance the public health, safety and general welfare.*

He believes there has been a violation for some time and does not believe a permit should be granted.

Mike Desjardins responded he has lived there for over 10 years. The first time these issues were brought to his attention was in April, 2012. He indicated a rain garden will be installed. He read from a May 3, 2012 letter from CMA Engineers: *Regarding the existing sump pump discharge, we observed that the discharge is to a lawn area adjacent to the building on the southwest corner. The discharge flows to a wooded/shrubbed buffer along the property line. From our observations, it appears that the water dissipates and remains along the wooded buffer, and does not flow to the abutter's driveway.* He and asked the Board to consider the professional opinion of the Town's peer review engineer. The Public Hearing closed at 6:28 p.m.

Mr. Mylroie noted another engineer's response (Jeff Clifford, Altus Engineering) supports the rain garden concept and the draft Findings of Fact incorporates this provision.

Mr. Emerson stated he would like to see the rain garden identified on the site plan along with the sump pump discharge, and does not feel he can move forward without this information. Mr. Melanson concurred stating he needs the plan before the Board. Mr. Mylroie stated a condition may be included that the stormwater issue be addressed prior to plan signature, as well as addition of permeable pavers on the plan that will help reduce stormwater runoff. He read from the Findings of Fact Conditions:

1. *Applicant shall provide a revised plan that incorporates Staff and CMS's comments including: 1) the location of a rain garden and the new sump pump pipe outlet; 2) the identification of permeable pavers rather than "Gravel Surface"; and 3) replace with permeable pavers the existing gravel surface leading to the existing handicap ramp.*

Ms. Driscoll noted that Mr. Clifford suggested a leaching catch basin may be less expensive than permeable pavers and asked whether the applicant should return with more details regarding a rain garden. Mr. Emerson stated he believes the Board should see the rain garden design not just him at plan sign off. Ms. Tuveson disagreed, citing the opinions of the two engineers and questioned if the discharge was responsible for the damage to the abutters driveway. It was noted the driveway is higher than the applicant's lawn and a large swale. She is comfortable with the language presented. Ms. Grinnell noted she is uncomfortable with the applicant's request to reduce the width of the landscape planter strip from 15 feet to 6 feet. Ms. Tuveson stated the property is narrow, and widening the planter strip will impact the parking area. The request would accomplish the need to provide a visual buffer. It's a matter of scale given the size of the property.

Mr. Melanson moved that in accordance with Title 16.10.5.2.C.7 a stormwater management plan be presented by the applicant

Ms. Grinnell seconded

Mr. Mylroie stated that, based on the scale of the project, a stormwater management plan is not necessary as noted by engineer comments and the proposed improvements including a rain garden and permeable pavers. Mr. Emerson stated he would like to see proposed improvements included on a plan the Board can review.

Motion carries with 5 in favor, 2 opposed (Tuveson; Balano), 0 abstentions.

Mr. Emerson directed the applicant to return to the Board with a site plan that depicts the stormwater management proposals. Ms. Grinnell asked about the date of the approved plan (12/24/03) as noted in the Findings. This will be confirmed.

ITEM 2 – Gerhartz/Pendry Residence — Pepperrell Road — Shoreland Development Plan Review

Action: Hold a Public Hearing, review plan, grant or deny approval. Steven Gerhartz and Susan Pendry, owner and applicant, requests approval to expand the existing two-story dwelling located at 118 Pepperrell Road in the Residential-Kittery Point Village and Shoreland Overlay zones, Tax Map 23, Lot 37.

Ken Markley, North Easterly Surveying, Inc., summarized the project proposal, noting the plans and profiles for the proposed building.

- Improvements are outside the 100 foot setback from the Highest Annual Tide
- A seasonal porch will be replaced with a screened deck
- Existing gravel drive will be removed and re-vegetated
- Added landscaping is proposed
- Existing deck on southeasterly corner will be reduced in size by one square foot

- The original building is 8 feet from the ROW
- A garage is proposed underneath the building at existing basement level
- A new driveway to access the front of the building

Brenden McNamara, Architect, highlighted the building renovations, noting the driveway will be crushed stones, not pavement.

Mr. Markley stated there is a net reduction of impervious area to improve stormwater runoff. He noted the abutter is generally positive about the plans.

Earldean Wells asked that the final plans show the driveway will be crushed stone. Mr. McNamara agreed to do so.

There was no public comment. The Public Hearing opened and closed at 6:50 p.m.

Ms. Tuveson moved to accept the plan

Ms. Grinnell seconded

Mr. Balano asked if this was to approve the plan as a final plan

Ms. Tuveson amended her motion to approve the preliminary plan as the final plan

Ms. Grinnell seconded

Motion carried unanimously

Ms. Grinnell noted the conditions include a statement that *All substantial changes ... must be approved by the Planning Board* but the prior Findings of Fact for the 3/28 meeting state *No changes, erasures, modifications ... may be made...unless resubmitted...* She requested elimination of the word 'substantial'.

WHEREAS: Steven Gerhartz and Susan Pendery request approval for structural removal and additions at property located at 118 Pepperrell Road, Tax Map 27, Lot 37, Kittery Point Village, Shoreland Overlay and Resource Protection Zones. Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted; and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following (Hereinafter the "Plan").

1. Shoreland Overlay Zone Project Plan Review Application, dated March 5, 2013.
2. Plan entitled: *Proposed Site Plan for Property at 118 Pepperrell Road, Kittery Point, York County, Maine, owned by Steven Conrad Gerhartz, Susan Emily Pendery*, dated February 18, 2013.

NOW THEREFORE, based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings:

FINDINGS OF FACT

I. Zoning Standards in the Shoreland Overlay Zone

Chapter 16.3 LAND USE ZONE REGULATIONS

16.3.2.17. D Shoreland Overlay Zone - Standards.

I. Zoning Standards in the Shoreland Overlay Zone appear to have been met.

Vote: 7 in favor 0 against 0 abstaining

II. Standards for Nonconforming Structures

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

16.7.3.1 Prohibitions and Allowances.

A. *Except as otherwise provided in this Article, a non-conforming condition must not be permitted to become more non-conforming.*

16.7.3.5.5 Nonconforming Structure Repair and/or Expansion

The proposed development appears to meet all *Factors for Consideration*, with no adverse impact. Additionally, it appears that II: *Standards for Nonconforming Structures* have been met.

Vote: 7 in favor 0 against 0 abstaining

III. Standards for Structures in the Shoreland Overlay Zone
Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Zones

The proposed development meets the above standards. There is no proposed replacement structure or foundation within the 100-foot setback from the protected resource. Additionally, it appears that *III: Standards for Structures in the Shoreland Overlay Zone* have been met.

Vote: 7 in favor 0 against 0 abstaining

IV. Procedures for Administering Permits For Shoreland Development Review
Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

16.10.10.2 D. An Application will be approved or approved with conditions if the reviewing authority makes a positive finding based on the information presented. It must be demonstrated that the proposed use will:

1. *maintain safe and healthful conditions;*

The proposed development does not appear to have an adverse impact

Vote: 7 in favor 0 against 0 abstaining

2. *not result in water pollution, erosion or sedimentation to surface waters;*

The proposed development does not appear to have an adverse impact. A Note on the final plan should include the Maine DEP's Best Management Practices, including erosion control measures to be followed during site and building renovations.

Vote: 7 in favor 0 against 0 abstaining

3. *adequately provide for the disposal of all wastewater;*

Not applicable. The development does not include any changes to the wastewater system.

Vote: 7 in favor 0 against 0 abstaining

4. *not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;*

The proposed development does not appear to have an adverse impact

Vote: 7 in favor 0 against 0 abstaining

5. *conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;*

The proposed development does not appear to have an adverse impact

Vote: 7 in favor 0 against 0 abstaining

6. *protect archaeological and historic resources;*

The proposed development does not appear to have an adverse impact

Vote: 7 in favor 0 against 0 abstaining

7. *not adversely affect existing commercial fishing or maritime activities in a commercial fisheries/ maritime activities district;*

The Board concurs this standard is not applicable.

Vote: 7 in favor 0 against 0 abstaining

8. *avoid problems associated with floodplain development and use*

Not applicable, the principal building is not located in the Floodplain

Vote: 7 in favor 0 against 0 abstaining

9. *is in conformance with the provisions of this Code; and*

The proposed additions appear to be in conformance with the Town Code.

Vote: 7 in favor 0 against 0 abstaining

10. *recorded with the York County Registry of Deeds.*

Final plan is required to be recorded at the York County Registry of Deeds. Staff recommends adding a summary of floor areas and percentages along with current base and overlay zoning information to recorded plan. See Conditions of Approval #1.

Vote: 7 in favor 0 against 0 abstaining

NOW THEREFORE the Kittery Town Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed development will have no significant detrimental impact, contingent upon the following condition(s):

Application Waivers: (none requested)

Conditions of Approval:

1. Incorporate architectural and site information on one plan suitable for recording that includes the calculations for the existing and proposed volume, floor area and impervious area for the property. Provide said plan to Town Planner for review prior to recording at the York County Registry of Deeds.
2. Final Plan must include notes that reflect adherence to the Maine DEP *Best Management Practices* for all work associated with site and building renovations to ensure adequate erosion control and slope stabilization.
3. All changes, erasures, modifications or revisions, as determined by the Planning Board Chairman, must be approved by the Planning Board.

Move to accept the above *Findings of Fact* as read, *Application Waivers* and *Conditions of Approval* if any, and approve the proposed *Development* in the Shoreland Overlay Zone and authorize the Planning Board Chairman to sign the Final Plan and Findings of Fact after the said conditions have been met.

Vote: 7 in favor 0 against 0 abstaining

Approved by the Kittery Planning Board on April 11, 2013

Instructions/Notice to Applicant

1. One (1) mylar copy and two (2) paper copies of the recorded Plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. State law requires all subdivision plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
4. Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.
5. This approval by the Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Planning Board Findings of Fact, and any Conditions of Approval.

Break

ITEM 3 – Title 16 Amendment – Craft Food and Beverage Facility use and definition

Action: Review proposed amendment and determine if complete to recommend to Town Council. Proposed amendment includes adding Craft Food and Beverage Facility to the Town's Land Use and Development Code's definitions (Section 16.2) and to allow in various commercial related zones as a permitted use and as a special exception use in the Shoreland Overlay Zone (Title 16.3).

Mr. Mylroie stated code amendments require a second public hearing notice, but requests the Board conduct the public hearing at this time with a second public hearing to be held per code requirements on April 25, 2013.

Mr. Emerson noted the East Bayside neighborhood in Portland where a brewery, mead and sake business began.

The Public Hearing opened at 7:22 p.m.

David Lincoln, Shepards Cove, noted the system has been putting entrepreneurs off for a long time. The two business involved includes a small brewery and a sake processor, both in the Foreside area. On March 13 a meeting was held with creative artists in Kittery, in an attempt to involve the artistic community in economic development. The Planning Board should look at broader implications of economic development. Each of these proposed businesses would be unique to Kittery, providing new jobs, technology, tourists and business. He suggests these businesses be looked upon favorably and be sure the proposed amendment language incorporates these proposed businesses.

Mr. Emerson stated the code differentiates between economic development and planning. The Board must be careful not to use the planning as a vehicle for economic development.

Todd Mott stated he is the micro-brewery that wishes to develop in Kittery, noting his plans would be to provide an artisanal brewery.

Gavin Beaudry, co-owner of Black Birch, noted this is a great opportunity to make the Town more accessible to the many talented people in Kittery, and this provides such an opportunity to make Kittery more unique.

Page Mead, Gerrish Island Lane, Kittery Point, spoke in support of the amendment noting that Mr. Mott is an internationally known brewer and these business proposals need to be taken advantage.

The Public Hearing closed at 7:30 p.m.

Mr. Emerson read the proposed definition: *Specialty Food or Beverage Facility means a facility wherein food and/or beverage is produced in limited quantities, sold on a wholesale or retail basis, distributed and/or consumed on the premises as may be permitted by the State of Maine law. This may include a brew pub, micro-brewery, coffee roaster and/or other facilities producing crafted alcoholic or non-alcoholic beverages and/or artisan food.*

Mr. Mylroie stated he had comments from a council member that included:

- Consistency using the terms 'and/or' throughout the definition;
- Specifying 'limited quantities'. Recommended including wording, '(less than 5,000 barrels per year)' following 'limited quantities';
- Insert 'as a restaurant or' preceding 'as may be permitted by the State of Maine law'.

Ms. Tuveson suggested establishing a definition of limited quantities, rather than being specific within the definition as 5,000 barrels of coffee is not applicable.

Mr. Emerson also noted the issue of traffic impact on a neighborhood or community needs to be addressed in regard to limited quantities.

Discussion followed regarding restaurant use versus a tasting facility and parking requirements. Ms. Grinnell suggested removing the final sentence of the definition.

Ms. Tuveson moved to hold a public hearing on April 25 to further discuss this item.

Ms. Grinnell seconded

Motion carried unanimously.

OLD BUSINESS

ITEM 4 – Harbor St. L.P./Cluster Subdivision off Brave Boat Harbor Road – Sketch Plan.

Action: Discuss site walk, review revised concept and approve if in compliance with Town Code and provide direction to Applicant for preliminary plan application. Owner Acadia Trust, N.A, and applicant Harbor Street LP, is requesting consideration of their plans for a 40-lot subdivision on a 59.8 acre parcel off Brave Boat Harbor Rd., Tax Map 69, Lot 6, Residential-Rural, with and Shoreland Overlay zones. Agent is Jeff Clifford, Altus Engineering, Inc.

Jeff Clifford provided an update on the project:

- A site walk was held.
- The project was scaled back from 40 to 27 lots.
- A new roadway system was designed, eliminating the looped road and reducing pavement.
- More contiguous open space designed, creating 68% of open space on the project.
- 100-foot wooded buffer along the road.
- Of the allowed density, only 61% is proposed (27 lots instead of 44).
- More buffer space on the northerly side of the parcel.
- Pre-application meeting with the DEP for a SLDA permit was held on April 2. Their primary concerns regarding stormwater runoff appeared to not be an issue.
- Deer wintering area maps were studied and only one deer wintering area was located, and that was one-half mile from the site.

- The 250 foot Shoreland Overlay setback extends only into the common open space at the entrance of the project.
- Bird habitat setback areas along the stream did not show up on state maps, however building lots are set back a minimum of 250 feet from the stream, as required.
- A representative from Inland Fish and Wildlife participated in the site walk and reported no significant habitat on the site.
- Engineers are still evaluating vernal pools and identifying test pit locations since the reconfiguration of lot locations.

Mr. Clifford addressed Board plan review note issues:

- Identification of reserved open space: This will be included on the preliminary plan.
- Class A soils mapping is underway.
- Vernal pool assessment is underway.
- Central gathering area and pedestrian walkways have been identified.
- A waiver will be needed for the length of the cul-de-sac, and dimensional standards can be waived under Cluster Subdivision review. They have included an emergency access road at this time, but would prefer to remove it and request a waiver at the preliminary plan review stage.
- 600 sf of impact at wetland crossing, utilizing a culvert that will enhance passage for wildlife.
- With the reduction in the number of lots, a traffic study is not triggered up for up to 270 trips per day.
- MDOT review will be required.
- Site distances are 400 feet in both directions.
- An archaeological investigation will be conducted on the site.
- Preliminary stormwater design will be developed for peer review. The use of wooded buffers is preferred and much of the common open space where the buffers are located would be placed into easements, managed by the homeowners association and the DEP, providing additional protection of the woodlands.

Earldean Wells asked about the access to lots 18-21, and the impact on the rock wall. Is the area at the end of the circle a lot?

Agent response: The access road would be a private lane with driveways. A private lane does not have to be as wide as a road, so impact on the rock wall is avoided. The area shown at the end of the circle is not a lot but an access way to the property beyond that point.

Mr. Clifford asked for conceptual approval of the sketch plan so they can move forward with preliminary plan application and further review.

Ms. Grinnell stated she had a problem with the length of the road and the continual granting of waivers for road lengths in a cluster development, and she would not support one.

Mr. Alesse asked if a waiver request was not granted, how far would the road extend.

Agent response: They would include an emergency access road and under road standards for the level of traffic for 27-lots, a 1,500 foot roadway is allowed. The roadway to the cul-de-sac would begin at the end of the emergency access roadway. He noted the roadway standards in the code can be modified in a cluster development to obtain flexibility in design, and this method has been utilized in developments throughout Kittery. Under the ordinance 44 lots could be built, with a shorter road.

Mr. Balano noted an objection to the length of the road would be because of a safety issue, therefore an emergency access is included. Discussion followed regarding granting of waivers.

Mr. Melanson asked about running a water line for fire service.

Applicant response: They will be proposing a 30,000 gallon cistern.

Mr. Alesse asked about blasting for foundations, septic and wells on the site. And what will be the impact of blasting on the water supply for people living in the vicinity of the project.

Applicant response: There will be no blasting for wells or septic and while there will be some blasting, 90% of the time a hoe ram will be used. Part of the SLDA requires a blasting plan and permit that will be evaluated by a State Geologist to determine if there are concerns or impacts on neighboring properties. Most blasting is shallow, but this will be addressed on the state level.

Mr. Emerson stated he would like to continue the site walk to include runoff observation and other concerns. He noted that Brave Boat Harbor Road is a scenic road and two access roads are not allowed in the Comprehensive Plan.

Ms. Grinnell asked if the footpaths require tree removal. If they are not required she would be happy to not have them included.

Agent response: The trails would follow the terrain, with only sticks and fallen debris removed. These would not be for motorized vehicles and are not required, but is an amenity to the project.

Discussion followed about woods roads on the property and a deeded right of way to a neighboring property.

Mr. Emerson asked about a bus stop location on Brave Boat Harbor Road.

Agent response: An area can be set aside for parking and drop off.

Mr. Clifford suggested a site walk be scheduled during the preliminary plan review when there is a preliminary stormwater management plan in place. At the sketch plan stage, a stormwater management plan is premature, though they have attempted to identify certain areas on the site where detention systems could be located.

Ms. Grinnell stated the site walk should continue as decided. Ms. Tuveson stated the continuance was in order because the applicant stated the project would be altered and the total number of lots reduced. Because stormwater management is a concern, it makes more sense to view the site when a preliminary stormwater management plan is available to the Board. A third site walk may be needed.

Mr. Melanson noted the site walk was 1 hour and 45 minutes and very thorough, in spite of some snow cover.

Mr. Melanson moved to accept the sketch plan and move into the preliminary plan review stage and postpone the continuance of the site walk until a stormwater management plan is presented.

Ms. Tuveson seconded

Earldean Wells stated the vernal pool assessment is not complete and could impact lot locations.

Mr. Melanson amended his prior motion to include completion of vernal pool assessment.

Mr. Balano seconded

Mr. Emerson noted this is a sketch plan and the Board is under no obligation to grant modifications or approvals in the preliminary plan stage based on acceptance of the sketch plan concept. Moving it to the next review stage allows further Board and peer review.

Mr. Alesse asked if sketch plan review is isolated from abutting properties. Mr. Emerson stated inclusion of surrounding properties and off-site wetland locations can be included in preliminary review. Mr. Clifford stated soils identification can be provided, and pointed out off-site woodland areas and fields.

Mr. Melanson stated with a prepared stormwater management plan in hand, adjoining wetland impact can be more readily assessed.

Mr. Mylroie asked that Mr. Melanson repeat his motion

Mr. Melanson moved to accept the sketch plan review, move to preliminary plan review and include a stormwater management plan and vernal pool assessment prior to continuance of the site walk.

Mr. Balano seconded

Mr. Alesse asked to include Planner's comment A. in the motion. Ms. Tuveson stated this request is part of the review process. Discussion followed regarding additional comments from the Planner:

A. *Show connections with adjacent parcels including natural resources, open space, pedestrian or vehicular connection, and/or relationship to adjacent parcels.*

B. *Show central neighborhood gathering area*

C. *Show pedestrian walkways setback from the street with link to a bus stop at Brave Boat Harbor Road*

D. *Delete southerly road access; may require waiver*

E. *Increase property line buffer in easterly area via restricted common or easement area*

F. *Verify water requirements for fire safety.*

Mr. Emerson stated these issues could be addressed in the preliminary plan review stage.

Mr. Melanson revised his motion:

Move to accept the Harbor Street L.P. Cluster Subdivision sketch plan, move to preliminary plan review to include stormwater management and vernal pool assessment prior to continuance of the site walk and include Planner's comments A-F.

Mr. Balano seconded

Motion carries unanimously

Break

ITEM 5 – Estes Bulk Propane Storage/U.S. Route 1 – Sketch Plan.

Action: Discuss site walk, review concept and approve if in compliance with Town Code and provide direction to Applicant for preliminary plan application. Owner M&T Reality, and applicant Estes Oil & Propane Company is requesting consideration of their plans for a 60,000 gallon bulk propane storage facility at their property south of 506 U.S. Route One., Tax Map 67, Lot 4, Mixed Use Zone, with a portion in the Residential Rural and Shoreland Overlay zones. Agent is Joe Cheever, ATTAR Engineering.

The applicant requested this item be continued to a future meeting. No discussion or action taken.

Ms. Grinnell moved to continue review of the Estes Bulk Propane Storage

Ms. Tuveson seconded

Ms. Driscoll asked that the zones be further identified. Mr. Emerson stated these requests can be made at sketch plan level.

Motion carried unanimously

ITEM 6 – Board Member Items: Comments and Discussion

Mr. Emerson: Noted that there will be issues before the Board that are impassioned, but Board members must remain professional, give the appearance of impartiality, and be very careful about how they address one another. Ms. Tuveson noted her not living somewhere does not affect her ability to understand an issue.

Mr. Balano: The Board must consider projects before them based on fact, not emotion. The Board cannot expand the ordinance beyond what is.

Ms. Tuveson: None

Mr. Melanson: The KPA will be before the Board requesting an amendment to Title 16.11.2 regarding KPA application submission requirements. Mr. Emerson stated Mr. Melanson's representation would not be a conflict of interest as Chairman of the Port Authority. He also stated that Board members may participate in ordinance amendment discussions without identifying a conflict of interest, for instance the Specialty Foods ordinance amendment before them now.

Ms. Driscoll

- Asked about an intent to file notice regarding the KPA and when the Planning Board would hear about it. Mr. Melanson noted the project is the Boating Infrastructure Grant proposal and the concept plans were posted on the website in January. He explained the Council authorized the DPW in November, 2012 to contract for design services for the BIG program. The grant was received and Baker Design Associates, in conjunction with Civil Consultants, is completing the application process. The Planning, Code Offices and Acting Town Manager have received the proposal and this will be posted on the web site. Maryann Conroy is organizing a meeting with Baker Design, the Planner, CEO and KPA on April 23 to discuss the design. When that process finishes it may come to the Planning Board. He explained there will be utility connections. Mr. Mylroie stated he believes it will come before the Board. Mr. Melanson stated the project will upgrade floats, provide a pump-out system, and docking facilities for transient boaters at the Pepperrell Cove pier. The grant totals \$232,000 in federal funds with a \$90,000 match (not yet approved by Council).
- Punch List – add: form-based zoning; Highpointe Circle gate and road name; and LD 220 and LD 1810. Ms. Grinnell asked that the punch list be included in the packet. Mr. Emerson stated the priorities need to be discussed and established at the April 25, 2013 meeting.
- Kittery Community Market – Does the Planning Board need any further information?

Mr. Alesse: None

Ms. Grinnell: Comp Plan Update format

Earldean Wells stated she was uncomfortable with the Board approving plans that are not final.

ITEM 7 – Town Planner Items: (No discussion)

- A. Kittery Foreside Plan;
- B. Comprehensive Plan Update (Housing, Economy, Land Use, Transportation);
- C. Other

NEW BUSINESS

ITEM 8 – Roylos Development - Land Division – Request for Extension

Action: Consider request and grant or deny to extend approved plan expiration. Owners, John and Beth Roylos request 3-month extension to their April 2012 approval to divide their property (Map 47 Lot 18-4) located off Haley Road along Wilson Creek in the Residential Rural (R-RL) Zone, a portion of which is within the Shoreland Overlay Zone.

Mr. Melanson moved to review this item out of order as Item #4

Ms. Tuveson seconded

Motion carried unanimously

John Roylos asked instead for a six-month extension in order to address the sewerage of the lots as required by his lending bank, and there is a delay related to ledge issues. Earldean Wells asked if the shoreland violations have been corrected on this property. Mr. Roylos stated the conditions would be corrected in the fall as per the conditions of approval. An escrow account will be established to make the corrective actions and follow-up inspection, and a building permit would not be issued until such an account is established and corrective action taken.

Mr. Balano moved to grant a six month extension to John Roylos beginning April 11, 2013

Ms. Tuveson seconded

Motion carried unanimously

Ms. Wells asked what will happen in six months. No one has been granted so many extensions to rectify such an atrocious violation. The Conservation Commission is very concerned about the amount of time this has taken. Mr. Emerson noted the Board cannot approve this project until the violation is corrected.

Ms. Grinnell moved to adjourn

Ms. Tuveson seconded

Motion carries unanimously

The Kittery Planning Board meeting of April 11, 2013 adjourned at 9:03 p.m.

Submitted by Jan Fisk, Recorder – April 15, 2013